

Form **990**Department of the Treasury
Internal Revenue Service**Return of Organization Exempt From Income Tax**

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation)

▶ The organization may have to use a copy of this return to satisfy state reporting requirements

OMB No. 1545-0047

2005Open to Public
Inspection**A** For the 2005 calendar year, or tax year beginning **01/01/2005** and ending **12/31/2005****B** Check if applicable

- ☐ Address change
☐ Name change
☐ Initial return
☐ Final return
☐ Amended return
☐ Application pending

Please use IRS label or print or type See Specific Instructions

C Name of organization**ATLANTIC LEGAL FOUNDATION**

Number and street (or P.O. box if mail is not delivered to street address)

60 EAST 42ND STREETRoom/suite
2102

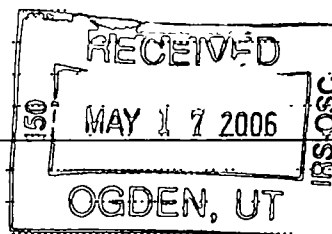
City or town, state or country, and ZIP + 4

NEW YORK, NY 10165-0006**D** Employer identification number**23-2022920****E** Telephone number**(212) 867-3322****F** Accounting method: ☐ Cash ☒ Accrual
Other (specify) ▶

• Section 501(c)(3) organizations and 4947(a)(1) nonexempt charitable trusts must attach a completed Schedule A (Form 990 or 990-EZ).

H and I are not applicable to section 527 organizations.**H(a)** Is this a group return for affiliates? ☐ Yes ☒ No**H(b)** If "Yes," enter number of affiliates ▶ **N/A****H(c)** Are all affiliates included? **N/A** ☐ Yes ☐ No
(If "No," attach a list)**H(d)** Is this a separate return filed by an organization covered by a group ruling? ☐ Yes ☒ No**I** Group Exemption Number ▶ **N/A****M** Check ☐ if the organization is not required to attach Sch. B (Form 990, 990-EZ, or 990-PF)**G** Website: ▶ **WWW.ATLANTICLEGAL.ORG****J** Organization type (check only one) ☒ 501(c) (3) (insert no.) ☐ 4947(a)(1) or ☐ 527**K** Check here ☐ if the organization's gross receipts are normally not more than \$25,000. The organization need not file a return with the IRS, but if the organization chooses to file a return, be sure to file a complete return. Some states require a complete return.**L** Gross receipts Add lines 6b, 8b, 9b, and 10b to line 12 ▶ **693,810.****Part I Revenue, Expenses, and Changes in Net Assets or Fund Balances**

Revenue	1	Contributions, gifts, grants, and similar amounts received.				
	a	Direct public support	1a	433,837.		
	b	Indirect public support	1b			
	c	Government contributions (grants)	1c			
	d	Total (add lines 1a through 1c) (cash \$ 433,837. noncash \$)	1d	433,837.		
	2	Program service revenue including government fees and contracts (from Part VII, line 93)	2	75,843.		
	3	Membership dues and assessments	3			
	4	Interest on savings and temporary cash investments	4	3,130.		
	5	Dividends and interest from securities	5			
	6a	Gross rents	6a			
	b	Less rental expenses	6b			
	c	Net rental income or (loss) (subtract line 6b from line 6a)	6c			
7	Other investment income (describe ▶)	7				
Expenses	8a	Gross amount from sales of assets other than inventory	(A) Securities		(B) Other	
	b	Less cost or other basis and sales expenses	8a			
	c	Gain or (loss) (attach schedule)	8b			
	d	Net gain or (loss) (combine line 8c, columns (A) and (B))	8c			
	8d		8d			
	9	Special events and activities (attach schedule) If any amount is from gaming, check here <input type="checkbox"/>				
	a	Gross revenue (not including \$ 0. of contributions reported on line 1a)	9a	181,000.		
	b	Less direct expenses other than fundraising expenses	9b	49,954.		
	c	Net income or (loss) from special events (subtract line 9b from line 9a)	9c	131,046.		
	10a	Gross sales of inventory, less returns and allowances	10a			
	b	Less cost of goods sold	10b			
	c	Gross profit or (loss) from sales of inventory (attach schedule) (subtract line 10b from line 10a)	10c			
Net Assets	11	Other revenue (from Part VII, line 103)	11			
	12	Total revenue (add lines 1d, 2, 3, 4, 5, 6c, 7, 8d, 9c, 10c, and 11)	12	643,856.		
	13	Program services (from line 44, column (B))	13	524,877.		
	14	Management and general (from line 44, column (C))	14	98,730.		
	15	Fundraising (from line 44, column (D))	15	98,631.		
	16	Payments to affiliates (attach schedule)	16			
	17	Total expenses (add lines 16 and 44, column (A))	17	722,238.		
	18	Excess or (deficit) for the year (subtract line 17 from line 12)	18	-78,382.		
	19	Net assets or fund balances at beginning of year (from line 73, column (A))	19	213,282.		
	20	Other changes in net assets or fund balances (attach explanation)	20	0.		
	21	Net assets or fund balances at end of year (combine lines 18, 19, and 20)	21	134,900.		

523001
02-03-06

LHA For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions.

Form 990 (2005)

Part II Statement of Functional Expenses

All organizations must complete column (A). Columns (B), (C), and (D) are required for section 501(c)(3) and (4) organizations and section 4947(a)(1) nonexempt charitable trusts but optional for others.

Do not include amounts reported on line 6b, 8b, 9b, 10b, or 16 of Part I.	(A) Total	(B) Program services	(C) Management and general	(D) Fundraising
22 Grants and allocations (attach schedule) (cash \$ <u>0</u> noncash \$ <u>0</u>) If this amount includes foreign grants, check here <input type="checkbox"/>	22			
23 Specific assistance to individuals (attach schedule)	23			
24 Benefits paid to or for members (attach schedule)	24			
25 Compensation of officers, directors, etc.	25 250,000.	187,500.	30,000.	32,500.
26 Other salaries and wages	26 78,427.	60,733.	8,493.	9,201.
27 Pension plan contributions	27			
28 Other employee benefits	28 49,100.	36,825.	5,892.	6,383.
29 Payroll taxes	29 24,363.	18,272.	2,924.	3,167.
30 Professional fundraising fees	30			
31 Accounting fees	31 11,500.		11,500.	
32 Legal fees	32			
33 Supplies	33 4,217.	3,163.	506.	548.
34 Telephone	34 9,551.	7,163.	1,146.	1,242.
35 Postage and shipping	35 9,129.	6,847.	1,095.	1,187.
36 Occupancy	36			
37 Equipment rental and maintenance	37 7,573.	5,680.	909.	984.
38 Printing and publications	38 25,164.	2,670.	4,714.	17,780.
39 Travel	39 7,899.	3,072.	2,648.	2,179.
40 Conferences, conventions, and meetings	40 11,199.	2,174.	7,170.	1,855.
41 Interest	41			
42 Depreciation, depletion, etc. (attach schedule)	42			
43 Other expenses not covered above (itemize):				
a	43a			
b	43b			
c	43c			
d	43d			
e	43e			
f	43f			
g SEE STATEMENT 2	43g 234,116.	190,778.	21,733.	21,605.
44 Total functional expenses. Add lines 22 through 43. (Organizations completing columns (B)-(D), carry these totals to lines 13-15)	44 722,238.	524,877.	98,730.	98,631.

Joint Costs. Check ☐ if you are following SOP 98-2.

Are any joint costs from a combined educational campaign and fundraising solicitation reported in (B) Program services?

Yes ☐ No ☒If "Yes," enter (i) the aggregate amount of these joint costs \$ N/A; (ii) the amount allocated to Program services \$ N/A;(iii) the amount allocated to Management and general \$ N/A; and (iv) the amount allocated to Fundraising \$ N/A

Form 990 (2005)

Part III Statement of Program Service Accomplishments (See the instructions.)

Form 990 is available for public inspection and, for some people, serves as the primary or sole source of information about a particular organization. How the public perceives an organization in such cases may be determined by the information presented on its return. Therefore, please make sure the return is complete and accurate and fully describes, in Part III, the organization's programs and accomplishments.

What is the organization's primary exempt purpose? ►

PUBLIC INTEREST LAW FIRM

All organizations must describe their exempt purpose achievements in a clear and concise manner. State the number of clients served, publications issued, etc. Discuss achievements that are not measurable. (Section 501(c)(3) and (4) organizations and 4947(a)(1) nonexempt charitable trusts must also enter the amount of grants and allocations to others.)

Program Service Expenses
(Required for 501(c)(3) and (4) orgs, and 4947(a)(1) trusts, but optional for others)

a SEE STATEMENT 4 - SUMMARY OF 2005 CASES

(Grants and allocations \$) If this amount includes foreign grants, check here ► ☐

524,877.

b

(Grants and allocations \$) If this amount includes foreign grants, check here ► ☐

c

(Grants and allocations \$) If this amount includes foreign grants, check here ► ☐

d

(Grants and allocations \$) If this amount includes foreign grants, check here ► ☐

e Other program services (attach schedule)

(Grants and allocations \$) If this amount includes foreign grants, check here ► ☐

f Total of Program Service Expenses (should equal line 44, column (B), Program services) ► **524,877.**

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Part IV Balance Sheets (See the instructions.)**Note:** Where required, attached schedules and amounts within the description column should be for end-of-year amounts only.

		(A) Beginning of year	(B) End of year
Assets	45 Cash - non-interest-bearing		45
	46 Savings and temporary cash investments	249,464.	46 145,413.
	47 a Accounts receivable	47a 37,049.	
	b Less: allowance for doubtful accounts	47b 0.	47c 37,049.
	48 a Pledges receivable	48a 11,190.	
	b Less: allowance for doubtful accounts	48b	48c 11,190.
	49 Grants receivable		49
	50 Receivables from officers, directors, trustees, and key employees		50
	51 a Other notes and loans receivable	51a	
	b Less: allowance for doubtful accounts	51b	51c
	52 Inventories for sale or use		52
	53 Prepaid expenses and deferred charges	17,761.	53 0.
	54 Investments - securities	<input type="checkbox"/> Cost <input type="checkbox"/> FMV	54
	55 a Investments - land, buildings, and equipment: basis	55a	
	b Less: accumulated depreciation	55b	55c
56 Investments - other		56	
57 a Land, buildings, and equipment: basis	57a		
b Less: accumulated depreciation	57b	57c	
58 Other assets (describe <input type="checkbox"/>)		58	
59 Total assets (must equal line 74). Add lines 45 through 58	275,982.	59 193,652.	
Liabilities	60 Accounts payable and accrued expenses	62,700.	60 58,752.
	61 Grants payable		61
	62 Deferred revenue		62
	63 Loans from officers, directors, trustees, and key employees		63
	64 a Tax-exempt bond liabilities		64a
	b Mortgages and other notes payable		64b
	65 Other liabilities (describe <input type="checkbox"/>)		65
66 Total liabilities. Add lines 60 through 65	62,700.	66 58,752.	
Net Assets or Fund Balances	Organizations that follow SFAS 117, check here <input checked="" type="checkbox"/> and complete lines 67 through 69 and lines 73 and 74.		
	67 Unrestricted	213,282.	67 134,900.
	68 Temporarily restricted		68
	69 Permanently restricted		69
	Organizations that do not follow SFAS 117, check here <input type="checkbox"/> and complete lines 70 through 74.		
	70 Capital stock, trust principal, or current funds		70
	71 Paid-in or capital surplus, or land, building, and equipment fund		71
	72 Retained earnings, endowment, accumulated income, or other funds		72
	73 Total net assets or fund balances (add lines 67 through 69 or lines 70 through 72; column (A) must equal line 19, column (B) must equal line 21)	213,282.	73 134,900.
74 Total liabilities and net assets/fund balances. Add lines 66 and 73	275,982.	74 193,652.	

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Part IV-A Reconciliation of Revenue per Audited Financial Statements With Revenue per Return (See the instructions)

a	Total revenue, gains, and other support per audited financial statements		a	840,691.
b	Amounts included on line a but not on Part I, line 12:			
1	Net unrealized gains on investments	b1		
2	Donated services and use of facilities	b2	196,835.	
3	Recoveries of prior year grants	b3		
4	Other (specify):	b4		
	Add lines b1 through b4		b	196,835.
c	Subtract line b from line a		c	643,856.
d	Amounts included on Part I, line 12, but not on line a:			
1	Investment expenses not included on Part I, line 6b	d1		
2	Other (specify):	d2		
	Add lines d1 and d2		d	0.
e	Total revenue (Part I, line 12). Add lines c and d		e	643,856.

Part IV-B Reconciliation of Expenses per Audited Financial Statements With Expenses per Return

a	Total expenses and losses per audited financial statements		a	919,073.
b	Amounts included on line a but not on Part I, line 17:			
1	Donated services and use of facilities	b1	196,835.	
2	Prior year adjustments reported on Part I, line 20	b2		
3	Losses reported on Part I, line 20	b3		
4	Other (specify):	b4		
	Add lines b1 through b4		b	196,835.
c	Subtract line b from line a		c	722,238.
d	Amounts included on Part I, line 17, but not on line a:			
1	Investment expenses not included on Part I, line 6b	d1		
2	Other (specify):	d2		
	Add lines d1 and d2		d	0.
e	Total expenses (Part I, line 17). Add lines c and d		e	722,238.

Part V-A Current Officers, Directors, Trustees, and Key Employees (List each person who was an officer, director, trustee, or key employee at any time during the year even if they were not compensated.) (See the instructions.)

(A) Name and address	(B) Title and average hours per week devoted to position	(C) Compensation (If not paid, enter -0-)	(D) Contributions to employee benefit plans & deferred compensation plans	(E) Expense account and other allowances
WILLIAM H. SLATTERY 60 EAST 42ND STREET SUITE 2102 NEW YORK, NY 10165-0006	PRESIDENT & DIRECTOR 40.00	82,055.	14,108.	0.
MARTIN S. KAUFMAN 60 EAST 42ND STREET SUITE 2102 NEW YORK, NY 10165-0006	SR VP & GENERAL COUNSEL 40.00	121,503.	17,086.	0.
BRISCOE R. SMITH 60 EAST 42ND STREET SUITE 2102 NEW YORK, NY 10165-0006	SR VP & COUNSEL 40.00	49,575.	16,822.	0.
LIST OF ADDITIONAL DIRECTORS-STMT 4 60 EAST 42ND STREET SUITE 2102 NEW YORK, NY 10165-0006		0.	0.	0.

Part VI Other Information (continued)

		Yes	No
82 a	Did the organization receive donated services or the use of materials, equipment, or facilities at no charge or at substantially less than fair rental value?	82a	X
b	If "Yes," you may indicate the value of these items here. Do not include this amount as revenue in Part I or as an expense in Part II. (See instructions in Part III.)	82b	196,835.
83 a	Did the organization comply with the public inspection requirements for returns and exemption applications?	83a	X
b	Did the organization comply with the disclosure requirements relating to quid pro quo contributions?	83b	X
84 a	Did the organization solicit any contributions or gifts that were not tax deductible?	84a	X
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	84b	N/A
85	501(c)(4), (5), or (6) organizations. a Were substantially all dues nondeductible by members?	85a	N/A
b	Did the organization make only in-house lobbying expenditures of \$2,000 or less?	85b	N/A
	If "Yes" was answered to either 85a or 85b, do not complete 85c through 85h below unless the organization received a waiver for proxy tax owed for the prior year.		
c	Dues, assessments, and similar amounts from members	85c	N/A
d	Section 162(e) lobbying and political expenditures	85d	N/A
e	Aggregate nondeductible amount of section 6033(e)(1)(A) dues notices	85e	N/A
f	Taxable amount of lobbying and political expenditures (line 85d less 85e)	85f	N/A
g	Does the organization elect to pay the section 6033(e) tax on the amount on line 85f?	85g	N/A
h	If section 6033(e)(1)(A) dues notices were sent, does the organization agree to add the amount on line 85f to its reasonable estimate of dues allocable to nondeductible lobbying and political expenditures for the following tax year?	85h	N/A
86	501(c)(7) organizations. Enter: a Initiation fees and capital contributions included on line 12	86a	N/A
b	Gross receipts, included on line 12, for public use of club facilities	86b	N/A
87	501(c)(12) organizations. Enter: a Gross income from members or shareholders	87a	N/A
b	Gross income from other sources. (Do not net amounts due or paid to other sources against amounts due or received from them.)	87b	N/A
88	At any time during the year, did the organization own a 50% or greater interest in a taxable corporation or partnership, or an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? If "Yes," complete Part IX	88	X
89 a	501(c)(3) organizations. Enter: Amount of tax imposed on the organization during the year under: section 4911 ▶ 0., section 4912 ▶ 0., section 4955 ▶ 0.		
b	501(c)(3) and 501(c)(4) organizations. Did the organization engage in any section 4958 excess benefit transaction during the year or did it become aware of an excess benefit transaction from a prior year? If "Yes," attach a statement explaining each transaction.	89b	X
c	Enter: Amount of tax imposed on the organization managers or disqualified persons during the year under sections 4912, 4955, and 4958		0.
d	Enter: Amount of tax on line 89c, above, reimbursed by the organization		0.
90 a	List the states with which a copy of this return is filed ▶ PA, NY, MD, WV, NJ		
b	Number of employees employed in the pay period that includes March 12, 2005	90b	5
91 a	The books are in care of ▶ ROSEMARY L. WEBBER Telephone no ▶ (717) 671-1361 Located at ▶ 2401 ASPEN WAY, HARRISBURG, PA ZIP + 4 ▶ 17110		
b	At any time during the calendar year, did the organization have an interest in or a signature or other authority over a financial account in a foreign country (such as a bank account, securities account, or other financial account)? If "Yes," enter the name of the foreign country ▶ N/A See the instructions for exceptions and filing requirements for Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts.	91b	X
c	At any time during the calendar year, did the organization maintain an office outside of the United States? If "Yes," enter the name of the foreign country ▶ N/A	91c	X
92	Section 4947(a)(1) nonexempt charitable trusts filing Form 990 in lieu of Form 1041- Check here and enter the amount of tax-exempt interest received or accrued during the tax year	92	N/A

Form 990 (2005)

Part VII Analysis of Income-Producing Activities (See the instructions.)**Note:** Enter gross amounts unless otherwise indicated

	Unrelated business income		Excluded by section 512, 513, or 514		(E) Related or exempt function income
	(A) Business code	(B) Amount	(C) Exclu- sion code	(D) Amount	
93 Program service revenue:					
a PROGRAM FEES					75,843.
b					
c					
d					
e					
f Medicare/Medicaid payments					
g Fees and contracts from government agencies					
94 Membership dues and assessments					
95 Interest on savings and temporary cash investments			14	3,130.	
96 Dividends and interest from securities					
97 Net rental income or (loss) from real estate:					
a debt-financed property					
b not debt-financed property					
98 Net rental income or (loss) from personal property					
99 Other investment income					
100 Gain or (loss) from sales of assets other than inventory					
101 Net income or (loss) from special events					131,046.
102 Gross profit or (loss) from sales of inventory					
103 Other revenue:					
a					
b					
c					
d					
e					
104 Subtotal (add columns (B), (D), and (E))		0.		3,130.	206,889.
105 Total (add line 104, columns (B), (D), and (E))					210,019.

Note: Line 105 plus line 1d, Part I, should equal the amount on line 12, Part I.**Part VIII Relationship of Activities to the Accomplishment of Exempt Purposes** (See the instructions.)

Line No.	Explain how each activity for which income is reported in column (E) of Part VII contributed importantly to the accomplishment of the organization's exempt purposes (other than by providing funds for such purposes)
93A	WORKSHOP AND SEMINAR FEES
101	ANNUAL DINNER SPECIAL EVENT.

Part IX Information Regarding Taxable Subsidiaries and Disregarded Entities (See the instructions.)

(A) Name, address, and EIN of corporation, partnership, or disregarded entity	(B) Percentage of ownership interest	(C) Nature of activities	(D) Total income	(E) End-of-year assets
N/A	%			
	%			
	%			
	%			

Part X Information Regarding Transfers Associated with Personal Benefit Contracts (See the instructions.)

(a) Did the organization, during the year, receive any funds, directly or indirectly, to pay premiums on a personal benefit contract? ☐ Yes ☒ No

(b) Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? ☐ Yes ☒ No

Note: If "Yes" to (b), file Form 8870 and Form 4720 (see instructions).

Please Sign Here: Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

Signature of officer: William H. Slattery Date: 5/10/06 Type or print name and title: WILLIAM H. SLATTERY, PRESIDENT

Paid Preparer's Use Only: Preparer's signature: [Signature] Date: 5/9/06 Check if self-employed: ☐ Preparer's SSN or PTIN: P00234022

Firm's name (or yours if self-employed), address, and ZIP + 4: O'CONNOR DAVIES MUNNS & DOBBINS, LLP
60 EAST 42ND STREET, 36TH FL.
NEW YORK, NY 10165-3698

EIN: 13-3385019 Phone no: (212) 286-2600

SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Organization Exempt Under Section 501(c)(3)

(Except Private Foundation) and Section 501(e), 501(f), 501(k),
501(n), or 4947(a)(1) Nonexempt Charitable Trust

Supplementary Information-(See separate instructions.)
▶ **MUST be completed by the above organizations and attached to their Form 990 or 990-EZ**

OMB No 1545-0047

2005

Name of the organization

ATLANTIC LEGAL FOUNDATION

Employer identification number

23 2022920

Part I Compensation of the Five Highest Paid Employees Other Than Officers, Directors, and Trustees

(See page 1 of the instructions List each one. If there are none, enter "None")

(a) Name and address of each employee paid more than \$50,000	(b) Title and average hours per week devoted to position	(c) Compensation	(d) Contributions to employee benefit plans & deferred compensation	(e) Expense account and other allowances
NONE				
Total number of other employees paid over \$50,000	0			

Part II-A Compensation of the Five Highest Paid Independent Contractors for Professional Services

(See page 2 of the instructions List each one (whether individuals or firms) If there are none, enter "None")

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
THOR L. HALVORSSSEN 260 WEST 54TH STREET, #15G, NEW YORK, NY 10019	PROG. & ADMIN.	60,000.
Total number of others receiving over \$50,000 for professional services	0	

Part II-B Compensation of the Five Highest Paid Independent Contractors for Other Services

(List each contractor who performed services other than professional services, whether individuals or firms If there are none, enter "None" See page 2 of the instructions.)

(a) Name and address of each independent contractor paid more than \$50,000	(b) Type of service	(c) Compensation
NONE		
Total number of other contractors receiving over \$50,000 for other services	0	

Part III Statements About Activities (See page 2 of the instructions)

Yes No

- 1 During the year, has the organization attempted to influence national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum? If "Yes," enter the total expenses paid or incurred in connection with the lobbying activities **1** \$ _____ \$ _____ (Must equal amounts on line 38, Part VI-A, or line i of Part VI-B)

1 X

Organizations that made an election under section 501(h) by filing Form 5768 must complete Part VI-A. Other organizations checking "Yes" must complete Part VI-B AND attach a statement giving a detailed description of the lobbying activities.

- 2 During the year, has the organization, either directly or indirectly, engaged in any of the following acts with any substantial contributors, trustees, directors, officers, creators, key employees, or members of their families, or with any taxable organization with which any such person is affiliated as an officer, director, trustee, majority owner, or principal beneficiary? (If the answer to any question is "Yes," attach a detailed statement explaining the transactions.)

a Sale, exchange, or leasing of property?

2a X

b Lending of money or other extension of credit?

2b X

c Furnishing of goods, services, or facilities?

2c X

d Payment of compensation (or payment or reimbursement of expenses if more than \$1,000)? See Part V-A (Form 990)

2d X

e Transfer of any part of its income or assets?

2e X

- 3 a Do you make grants for scholarships, fellowships, student loans, etc.? (If "Yes," attach an explanation of how you determine that recipients qualify to receive payments)

3a X

b Do you have a section 403(b) annuity plan for your employees?

3b X

c During the year, did the organization receive a contribution of qualified real property interest under section 170(h)?

3c X

- 4 a Did you maintain any separate account for participating donors where donors have the right to provide advice on the use or distribution of funds?

4a X

b Do you provide credit counseling, debt management, credit repair, or debt negotiation services?

4b X

Part IV Reason for Non-Private Foundation Status (See pages 3 through 6 of the instructions)

The organization is not a private foundation because it is. (Please check only **ONE** applicable box.)

- 5 ☐ A church, convention of churches, or association of churches. Section 170(b)(1)(A)(i)
- 6 ☐ A school. Section 170(b)(1)(A)(ii). (Also complete Part V.)
- 7 ☐ A hospital or a cooperative hospital service organization. Section 170(b)(1)(A)(iii)
- 8 ☐ A Federal, state, or local government or governmental unit. Section 170(b)(1)(A)(v)
- 9 ☐ A medical research organization operated in conjunction with a hospital. Section 170(b)(1)(A)(iii). Enter the hospital's name, city, and state **1**
- 10 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit. Section 170(b)(1)(A)(iv). (Also complete the **Support Schedule** in Part IV-A.)
- 11a ☒ An organization that normally receives a substantial part of its support from a governmental unit or from the general public. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 11b ☐ A community trust. Section 170(b)(1)(A)(vi). (Also complete the **Support Schedule** in Part IV-A.)
- 12 ☐ An organization that normally receives (1) more than 33 1/3% of its support from contributions, membership fees, and gross receipts from activities related to its charitable, etc., functions - subject to certain exceptions, and (2) no more than 33 1/3% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See section 509(a)(2). (Also complete the **Support Schedule** in Part IV-A.)
- 13 ☐ An organization that is not controlled by any disqualified persons (other than foundation managers) and supports organizations described in (1) lines 5 through 12 above, or (2) sections 501(c)(4), (5), or (6), if they meet the test of section 509(a)(2). Check the box that describes the type of supporting organization **1** ☐ Type 1 ☐ Type 2 ☐ Type 3

Provide the following information about the supported organizations. (See page 6 of the instructions.)

(a) Name(s) of supported organization(s)	(b) Line number from above

- 14 ☐ An organization organized and operated to test for public safety. Section 509(a)(4). (See page 6 of the instructions.)

Part IV-A Support Schedule (Complete only if you checked a box on line 10, 11, or 12.) Use cash method of accounting.
Note: You may use the worksheet in the instructions for converting from the accrual to the cash method of accounting.

Calendar year (or fiscal year beginning in)	(a) 2004	(b) 2003	(c) 2002	(d) 2001	(e) Total
15 Gifts, grants, and contributions received (Do not include unusual grants. See line 28.)	388,058.	349,888.	477,358.	454,853.	1,670,157.
16 Membership fees received					
17 Gross receipts from admissions, merchandise sold or services performed, or furnishing of facilities in any activity that is related to the organization's charitable, etc., purpose					
18 Gross income from interest, dividends, amounts received from payments on securities loans (section 512(a)(5)), rents, royalties, and unrelated business taxable income (less section 511 taxes) from businesses acquired by the organization after June 30, 1975	3,072.	2,158.	453.	959.	6,642.
19 Net income from unrelated business activities not included in line 18					
20 Tax revenues levied for the organization's benefit and either paid to it or expended on its behalf					
21 The value of services or facilities furnished to the organization by a governmental unit without charge. Do not include the value of services or facilities generally furnished to the public without charge					
22 Other income. Attach a schedule. Do not include gain or (loss) from sale of capital assets		254,476.	SEE STATEMENT 3		254,476.
23 Total of lines 15 through 22	391,130.	606,522.	477,811.	455,812.	1,931,275.
24 Line 23 minus line 17	391,130.	606,522.	477,811.	455,812.	1,931,275.
25 Enter 1% of line 23	3,911.	6,065.	4,778.	4,558.	
26 Organizations described on lines 10 or 11: a Enter 2% of amount in column (e), line 24					38,626.
b Prepare a list for your records to show the name of and amount contributed by each person (other than a governmental unit or publicly supported organization) whose total gifts for 2001 through 2004 exceeded the amount shown in line 26a. Do not file this list with your return. Enter the total of all these excess amounts					639,368.
c Total support for section 509(a)(1) test. Enter line 24, column (e)					1,931,275.
d Add: Amounts from column (e) for lines 18 <u>6,642.</u> 19 <u>254,476.</u>					900,486.
22 <u>254,476.</u> 26b <u>639,368.</u>					1,030,789.
e Public support (line 26c minus line 26d total)					53.3735%
f Public support percentage (line 26e (numerator) divided by line 26c (denominator))					
27 Organizations described on line 12: a For amounts included in lines 15, 16, and 17 that were received from a "disqualified person," prepare a list for your records to show the name of, and total amounts received in each year from, each "disqualified person." Do not file this list with your return. Enter the sum of such amounts for each year N/A					
(2004) (2003) (2002) (2001)					
b For any amount included in line 17 that was received from each person (other than "disqualified persons"), prepare a list for your records to show the name of, and amount received for each year, that was more than the larger of (1) the amount on line 25 for the year or (2) \$5,000. (Include in the list organizations described in lines 5 through 11b, as well as individuals.) Do not file this list with your return. After computing the difference between the amount received and the larger amount described in (1) or (2), enter the sum of these differences (the excess amounts) for each year N/A					
(2004) (2003) (2002) (2001)					
c Add: Amounts from column (e) for lines 15 <u> </u> 16 <u> </u>					N/A
17 <u> </u> 20 <u> </u> 21 <u> </u>					N/A
d Add: Line 27a total <u> </u> and line 27b total <u> </u>					N/A
e Public support (line 27c total minus line 27d total)					N/A
f Total support for section 509(a)(2) test: Enter amount on line 23, column (e)					N/A
g Public support percentage (line 27e (numerator) divided by line 27f (denominator))					N/A %
h Investment income percentage (line 18, column (e) (numerator) divided by line 27f (denominator))					N/A %

28 Unusual Grants: For an organization described in line 10, 11, or 12 that received any unusual grants during 2001 through 2004, prepare a list for your records to show, for each year, the name of the contributor, the date and amount of the grant, and a brief description of the nature of the grant. Do not file this list with your return. Do not include these grants in line 15.

Part V Private School Questionnaire (See page 7 of the instructions)

N/A

(To be completed ONLY by schools that checked the box on line 6 in Part IV)

	Yes	No
29 Does the organization have a racially nondiscriminatory policy toward students by statement in its charter, bylaws, other governing instrument, or in a resolution of its governing body?	29	
30 Does the organization include a statement of its racially nondiscriminatory policy toward students in all its brochures, catalogues, and other written communications with the public dealing with student admissions, programs, and scholarships?	30	
31 Has the organization publicized its racially nondiscriminatory policy through newspaper or broadcast media during the period of solicitation for students, or during the registration period if it has no solicitation program, in a way that makes the policy known to all parts of the general community it serves? If "Yes," please describe, if "No," please explain (If you need more space, attach a separate statement)	31	
<hr/>		
<hr/>		
32 Does the organization maintain the following		
a Records indicating the racial composition of the student body, faculty, and administrative staff?	32a	
b Records documenting that scholarships and other financial assistance are awarded on a racially nondiscriminatory basis?	32b	
c Copies of all catalogues, brochures, announcements, and other written communications to the public dealing with student admissions, programs, and scholarships?	32c	
d Copies of all material used by the organization or on its behalf to solicit contributions? If you answered "No" to any of the above, please explain (If you need more space, attach a separate statement)	32d	
<hr/>		
33 Does the organization discriminate by race in any way with respect to		
a Students' rights or privileges?	33a	
b Admissions policies?	33b	
c Employment of faculty or administrative staff?	33c	
d Scholarships or other financial assistance?	33d	
e Educational policies?	33e	
f Use of facilities?	33f	
g Athletic programs?	33g	
h Other extracurricular activities? If you answered "Yes" to any of the above, please explain (If you need more space, attach a separate statement)	33h	
<hr/>		
<hr/>		
34 a Does the organization receive any financial aid or assistance from a governmental agency?	34a	
b Has the organization's right to such aid ever been revoked or suspended? If you answered "Yes" to either 34a or b, please explain using an attached statement	34b	
35 Does the organization certify that it has complied with the applicable requirements of sections 4 01 through 4 05 of Rev Proc 75-50, 1975-2 C B 587, covering racial nondiscrimination? If "No," attach an explanation	35	

Schedule A (Form 990 or 990-EZ) 2005

Part VI-A Lobbying Expenditures by Electing Public Charities (See page 9 of the instructions)

N/A

(To be completed ONLY by an eligible organization that filed Form 5768)

Check ☒ **a** if the organization belongs to an affiliated groupCheck ☐ **b** if you checked "a" and "limited control" provisions apply**Limits on Lobbying Expenditures**

(The term "expenditures" means amounts paid or incurred)

		(a) Affiliated group totals	(b) To be completed for ALL electing organizations												
		N/A													
36	Total lobbying expenditures to influence public opinion (grassroots lobbying)	36													
37	Total lobbying expenditures to influence a legislative body (direct lobbying)	37													
38	Total lobbying expenditures (add lines 36 and 37)	38													
39	Other exempt purpose expenditures	39													
40	Total exempt purpose expenditures (add lines 38 and 39)	40													
41	Lobbying nontaxable amount Enter the amount from the following table -														
<table border="0"> <tr> <td>If the amount on line 40 is -</td> <td>The lobbying nontaxable amount is -</td> </tr> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 40</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000</td> </tr> </table>		If the amount on line 40 is -	The lobbying nontaxable amount is -	Not over \$500,000	20% of the amount on line 40	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000	Over \$17,000,000	\$1,000,000	41	
If the amount on line 40 is -	The lobbying nontaxable amount is -														
Not over \$500,000	20% of the amount on line 40														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000														
Over \$17,000,000	\$1,000,000														
42	Grassroots nontaxable amount (enter 25% of line 41)	42													
43	Subtract line 42 from line 36. Enter -0- if line 42 is more than line 36	43													
44	Subtract line 41 from line 38 Enter -0- if line 41 is more than line 38	44													

Caution: If there is an amount on either line 43 or line 44, you must file Form 4720.**4-Year Averaging Period Under Section 501(h)**

(Some organizations that made a section 501(h) election do not have to complete all of the five columns below See the instructions for lines 45 through 50 on page 11 of the instructions)

Calendar year (or fiscal year beginning in) ▶	Lobbying Expenditures During 4-Year Averaging Period				N/A
	(a) 2005	(b) 2004	(c) 2003	(d) 2002	(e) Total
45	Lobbying nontaxable amount				0.
46	Lobbying ceiling amount (150% of line 45(e))				0.
47	Total lobbying expenditures				0.
48	Grassroots nontaxable amount				0.
49	Grassroots ceiling amount (150% of line 48(e))				0.
50	Grassroots lobbying expenditures				0.

Part VI-B Lobbying Activity by Nonelecting Public Charities

(For reporting only by organizations that did not complete Part VI-A) (See page 11 of the instructions)

During the year, did the organization attempt to influence national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of

- a Volunteers
- b Paid staff or management (Include compensation in expenses reported on lines c through h.)
- c Media advertisements
- d Mailings to members, legislators, or the public
- e Publications, or published or broadcast statements
- f Grants to other organizations for lobbying purposes
- g Direct contact with legislators, their staffs, government officials, or a legislative body
- h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any other means
- i Total lobbying expenditures (Add lines c through h.)

Yes	No	Amount
	X	
	X	
	X	
	X	
	X	
	X	
	X	
	X	
		0.

If "Yes" to any of the above, also attach a statement giving a detailed description of the lobbying activities.

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FORM 990	SPECIAL EVENTS AND ACTIVITIES				STATEMENT 1
DESCRIPTION OF EVENT	GROSS RECEIPTS	CONTRIBUT. INCLUDED	GROSS REVENUE	DIRECT EXPENSES	NET INCOME
FUNDRAISING DINNER	181,000.		181,000.	49,954.	131,046.
TO FM 990, PART I, LINE 9	181,000.		181,000.	49,954.	131,046.

FORM 990	OTHER EXPENSES			STATEMENT 2
DESCRIPTION	(A) TOTAL	(B) PROGRAM SERVICES	(C) MANAGEMENT AND GENERAL	(D) FUNDRAISING
LEGAL SUPPORT SERVICES	14,382.	14,382.	0.	0.
OTHER PROFESSIONAL SERVICES	82,066.	47,387.	15,828.	18,851.
INSURANCE	15,374.	13,737.	1,637.	0.
MISCELLANEOUS	6,947.	403.	4,090.	2,454.
DUES AND SUBSCRIPTIONS	2,882.	2,404.	178.	300.
ATTORNEY CLIENT PRIVILEGE	75,938.	75,938.		
CHARTER SCHOOL ADVOCACY	36,527.	36,527.		
TOTAL TO FM 990, LN 43	234,116.	190,778.	21,733.	21,605.

SCHEDULE A	OTHER INCOME			STATEMENT 3
DESCRIPTION	2004 AMOUNT	2003 AMOUNT	2002 AMOUNT	2001 AMOUNT
AWARDED LEGAL FEES	0.	254,476.	0.	0.
TOTAL TO SCHEDULE A, LINE 22	0.	254,476.	0.	0.

ATLANTIC LEGAL FOUNDATION
60 East 42nd Street
Suite 2102
New York, NY 10165

EIN # 23-2022920

Activities in 2005

Atlantic Legal Foundation's Mission

The mission of the Atlantic Legal Foundation is to advance the rule of law by advocating limited, effective government; free enterprise; individual liberty; school choice; and sound science.

Atlantic Legal is a nonprofit, nonpartisan public interest law firm with a demonstrable history of fighting for the integrity of the judicial process by ensuring that courts apply sound legal and scientific principles. Atlantic Legal provides legal representation and advice, without fee, to individuals, corporations, scientists, educators, trade associations, and other groups.

In case after case, Atlantic Legal brings about favorable resolutions for clients who continue to be challenged by those who use the power of government or the legal process to deny fundamental rights and liberties.

Activities and Programs

SOUND SCIENCE IN THE COURTROOM

***Aguilar v. ExxonMobil, et al.* (California Supreme Court) (*Amicus*)**

In September 2004 we filed an *amicus* brief in the California Court of Appeal on behalf of a group of 11 distinguished scientists in another phase of the seemingly interminable litigation (called "Lockheed Litigation Cases (Group 4 and 5 retrial plaintiffs)" and also known as "Lockheed IV"). These cases arise out of the use and discharge into the soil and groundwater of solvents and other chemicals used in the manufacture of "Stealth" aircraft at Lockheed plants in California.

Some of the cases were brought by persons living in the vicinity of the plants, and the relief sought was payment for "medical monitoring" of large numbers of individuals allegedly exposed to the hazardous chemicals through ingestion of drinking water; we had filed an *amicus* brief in one of those cases, in which the California Supreme Court ultimately agreed with our position that individualized factors of intensity and duration of exposure and age, physical condition, other exposures and prior medical history made it improper to certify a class.

In another class of cases, in excess of 600 current and former Lockheed workers sued the company, claiming that chemical substances to which they were exposed on the job caused them injuries as a result of Lockheed's lax safety procedures and fraudulent concealment of known chemical hazards. The workers also sued chemical manufacturers and suppliers, including the defendants in "Lockheed IV", claiming that their alleged failure to adequately warn of hazards associated with the chemical products they allegedly supplied to Lockheed caused the workers harm. The workers' claims were coordinated for separate, consecutive, trials before a single judge. Prior to the first trial, Lockheed settled. The plaintiffs pursued their claims against over 30 suppliers of products to Lockheed on a theory of breach of the duty to warn.

At the retrial of the Group 4 and 5 worker plaintiffs, plaintiffs proffered only one expert on general causation, Dr. Daniel Teitelbaum, who relied on a survey of epidemiology studies for his causation opinion. He concluded that the five chemicals at issue in this case had acute and chronic irritant and allergic, toxic effects on the nervous system, the kidney, and the liver, but he did not distinguish between chronic irreversible and acute reversible effects, even though acute effects were not at issue at this stage of the proceeding. Dr. Teitelbaum relied on epidemiology studies, animal studies, case reports, treatises, textbooks and toxic registries and the material safety data sheets with defendants' warnings for the products at issue as the bases for his opinions. He was examined briefly in a hearing before the trial judge. The trial court's final ruling excluded his general causation testimony.

In our *amicus* brief on behalf of a dozen prominent academic scientists, including a Nobel Prize winner in Chemistry, we argued that the trial court correctly excluded Dr. Teitelbaum's testimony for lack of a reliable foundation and that the trial court properly determined that none of the materials on which he relied provided a proper foundation for his opinions.

In January, 2005, the California Court of Appeal affirmed the trial court's dismissal of the complaint and approved the trial court's exclusion of the testimony of plaintiffs' expert. In doing so, the Court of Appeal adopted many of the arguments we made in our *amicus* brief and relied on many of the authorities we cited. Appellate counsel for ExxonMobil commented that "I think [your brief] will be very helpful to the court. You obviously took great care in preparing it, and we really appreciate it." and "I definitely think you [had] an impact on the court. Thanks for your scholarly work."

In October, 2005, we filed an *amicus* brief on behalf of the same group of scientists in the California Supreme Court on the merits. The case has not yet been set down for oral argument.

Atlantic Legal Foundation's participation in this case is in the public interest because it continues the Foundation's important contributions in ensuring that the judicial and regulatory processes utilize sound science and eschew "junk science," beginning with our *amicus* brief on behalf of several Nobel Laureates and other prominent scientists in *Daubert v. Merrell Dow Pharmaceuticals*, a case in which the U.S. Supreme Court cited and quoted our brief. Since then, the Foundation has frequently participated in cases in federal and state appellate courts throughout the United States to assist the courts in understanding the scientific issues and principles involved in product liability, medical malpractice and mass tort cases.

National Federation of Independent Business v. EPA (U.S. District Court, District of Columbia) (First Chair)

In April 2001, as attorneys for the National Federation of Independent Business ("NFIB"), we filed an action in the United States District Court for the District of Columbia against Christine Todd Whitman, as Administrator of the Environmental Protection Agency (EPA) and EPA, challenging the EPA's new lead reporting rule, which had become effective in that month.

This case involved an EPA final rule reducing the "manufacture, process, or otherwise use" reporting threshold for lead and lead compounds under the Toxics Release Inventory ("TRI") program to 100 pounds -- a reduction by a factor of 250 in the case of facilities that "manufacture or process" lead and by a factor of 100 in the case of facilities that "otherwise use" lead. 66 Fed. Reg. 4500 ("the Rule"). This action was taken based on EPA's view that "lead and lead compounds are highly persistent, bioaccumulative, toxic chemicals." The Rule also eliminates the *de minimis* exemption for lead and lead compounds. The combined effect of reducing the reporting threshold and eliminating the *de minimis* exemption was to subject thousands of additional facilities to the burdens of making threshold determinations for lead and lead compounds, and preparing and filing annual TRI reports.

We challenged the new lead reporting rule and argued that the EPA did not conduct an appropriate "small business impact" study and that its new threshold was not based on sound science.

In January 2005, cross motions for summary judgment in this case were submitted. One year later, the District Court granted the EPA's motion. This was a disappointing result, because the court appears not to have evaluated the scientific merits of judging hazard levels through an inappropriate methodology. The EPA lowered its lead threshold after deciding that lead is bioaccumulative. It continues to insist on that decision, which was made purely on the basis of generally increased blood lead levels, without measuring in a scientific manner the bioaccumulative properties of the element itself. In effect, the court has sent a signal to government agencies that very lenient standards will be applied to "agency science," with the end result being the improper acceptance of inaccurate science as a sufficient justification for alerting the public not to actual hazard, but to the mere possibility of hazard. This can be grossly misleading and impose unnecessary and unproductive regulatory burdens, especially on America's small businesses, which employ 58% of America's nonfarm workers.

Atlantic Legal Foundation's participation in this case was in the public interest because it continues the Foundation's important contributions in ensuring that the judicial and regulatory processes utilize sound science and eschew "junk science" and that government agencies comply with laws protecting small business.

***Daubert* Update**

In 1993, the US Supreme Court decided *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579. *Daubert* quickly became a seminal case on the admissibility of expert evidence in federal court proceedings under Fed.R.Evid. 702. It was followed in 1997 by *General Electric Co. v. Joiner*, 522 U.S. 136, and in 1999 by *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, both of which elaborated and expanded the Court's teaching in *Daubert*. Together, these 3 cases have had a far reaching impact on product liability, environmental exposure and other cases in federal courts. In 2002, Fed.R.Evid. was amended to incorporate the criteria articulated in *Daubert*. Numerous states have adopted Fed.R.Evid. 702 or a variation of it; some, but not all, of them have also adopted the 2002 amendment. Many, but not all, states have "imported" *Daubert* into their jurisprudence. Some have not, however, imported the *Joiner* or *Kumho* elaborations on *Daubert*. Some states have adopted a variation on *Daubert*, or have adopted *Daubert* in only limited types of cases. Other states have explicitly rejected *Daubert* and its progeny, and some state courts, while verbally disavowing *Daubert*, have themselves adopted similar standards.

Atlantic Legal Foundation has played an influential role in *Daubert* trilogy and later litigation seeking to ensure that the court's use their "gatekeeping" power to ensure that sound science is used as the basis for adjudication: Our amicus brief on behalf of half a dozen Nobel laureates and a dozen other prominent scientists was cited and quoted by the majority in *Daubert*, our amicus brief in *Kumho* was also cited with approval by the Court. In addition, Atlantic Legal has submitted numerous briefs in federal courts of appeal and state appellate courts urging the adoption or application of "sound science" principles in many types of cases.

We are now working on an update of the status of *Daubert* and analogous cases or rules leading to the use of scientific principles by state courts, which we plan to publish. We believe this update (the first comprehensive review of the subject in approximately three years) will be of substantial assistance to the legal and corporate communities.

Atlantic Legal Foundation's work on this project is in the public interest because it serves to educate the public on the state-by-state status of evidentiary rules relating to scientific and other expert evidence.

SCHOOL CHOICE

***Bush v. Holmes* (Florida Supreme Court) (*Amicus*)**

In January 2005, Atlantic Legal joined a brief filed in the Florida Supreme Court challenging the intermediate appellate court's holding that the Opportunity Scholarships (awarded predominantly to African-American and Latino students) were prohibited by the Florida Constitution as indirectly aiding religious schools. Atlantic Legal represented New Jersey's Excellent Education for Everyone. The brief was written by Professor G. Marcus Cole of Stanford Law School and called the court's attention to research showing that vouchers provide a better education for recipients and, indeed, serve to improve public schools.

In early January 2006, the Florida Supreme Court ruled that the Opportunity Scholarships program violated the Florida Constitution.

Education: Guidebook to Counter Unionization of Charter Schools

Charter school advocates have described to Atlantic Legal the considerable problems their schools encounter when the teachers' union launches a campaign to unionize charter school employees. Using questionable and heavy-handed tactics, the union can lead teachers—who are often ignorant about the law—into signing over their representation to the union. Once unionized, a charter school will remain independent only in name and will be threatened by all of the damaging consequences of unionization on educational innovation and quality—consequences that led to the creation of charter schools in the first place.

Although there are many attorneys who believe in school choice and charter schools, often they are not skilled in labor law matters. Labor law is highly specialized and charter school boards need the advice of experts who can explain matters to laymen and educate individuals about their legal rights. Atlantic Legal secured the expertise of Jackson Lewis LLP, one of the nation's foremost specialists in labor law, to address this problem. Atlantic Legal's *Leveling the Playing Field: What New York Charter School Leaders Need To Know About Union Organizing* was published in the fall of 2005.

"*Leveling...*" has been widely circulated to considerable acclaim. Books covering New Jersey and Massachusetts are ready for publication, and the California Charter Schools Association—following union organizing in two of their most successful charters—has agreed to underwrite an edition for that state.

In November 2005, Atlantic Legal formally launched its Charter School Advocacy Program and its "*Leveling...*" guide with a half-day conference and luncheon in New York City. Following two morning sessions devoted to solving personnel problems in charter schools, the luncheon featured an address by former U.S. Secretary of Education Rod Paige. Atlantic Legal was proud to honor Dr. Paige with its inaugural *Freedom Award for Leadership in School Choice*.

Counseling and Litigation: Attorney Clearinghouse

Atlantic Legal's Charter School Attorney Clearinghouse is on solid footing. Eleven law firms have agreed to assist charter schools on a *pro bono* basis. Jackson Lewis LLP has indicated that it would be available to represent New York charters (and others) in negotiations with unions at favorable rates. The New York Charter Schools Association's leadership understandably was delighted at this offer as there are very few law firms with labor law expertise focusing on the rights of employers.

Other

The Charter School Advocacy Program includes a dedicated website (www.defendcharterschools.org) which is growing in content and scope.

The Foundation's participation in school choice and charter school litigation and education activities is in the public interest because charter schools provide an innovative alternative to often failing public schools, and can result in superior educational outcomes.

CORPORATE GOVERNANCE

***Dore v. Arnold Worldwide* (California Supreme Court) (*Amicus*)**

On January 29, 2005, Atlantic Legal Foundation and Jackson Lewis LLP filed a brief *amicus curiae* in the California Supreme Court on behalf of the Southern California Chapter of the Association of Corporate Counsel, in support of an employer's right to terminate the employment of an individual at will. The brief points out that the statement in the employment agreement that "at will" means the employee can be terminated "at any time" echoes precisely the definition of "at will" in an opinion of the California Supreme Court in an earlier case. The brief contains a strong argument in favor of introductory periods, pointing out that they generally have nothing to do with termination of employment, but serve other legitimate personnel policies such as setting initial production quotas, benefit levels, eligibility for employer insurance, and the like. The case has been set for argument in June 2006.

Atlantic Legal Foundation's participation in this case is in the public interest because the concept of "at will" employment and freedom of contract are fundamental to our free market economy.

***Pereira v. Cogan* (U.S. Court of Appeals, 2nd Circuit) (*Amicus*)**

In December, 2003, Atlantic Legal filed an *amicus* brief on behalf of the Corporate Law Departments Section of the Los Angeles County Bar Association and twelve current and former general counsels of major corporations in support of Philip Smith's appeal to the United States Court of Appeals for the Second Circuit. The trial court found Smith liable for over \$20 million in connection with his alleged failures to discharge his duties as chief legal officer of Trace International Holdings, a closely-held Delaware company.

The United States Bankruptcy Trustee had claimed that the majority shareholder, directors, and officers of Trace had breached their fiduciary duties to creditors and minority shareholders by failing to prevent "looting" of the company by the majority shareholder, CEO, and Chairman, Marshall Cogan. Cogan, it was alleged, looted Trace through excessive compensation, illegal dividends, a share buy-back transaction, employing his daughter, and loans to certain individuals.

Smith was found liable because of his participation in two transactions. The first, a legal repurchase of preferred stock, saved Trace millions of dollars in *pari passu* dividends. Though neither Cogan nor Smith reaped any personal gain from this transaction, the court found Smith personally liable because Trace was "in the vicinity of insolvency" when he structured the repurchase and because the court was not persuaded that the transaction was "entirely fair" to the corporation, its creditors, or stockholders. The second series of transactions involved loans by Trace to Cogan. Though Smith did not know about most of these, though he did not benefit from them, and though he was not

found to be negligent, the court found Smith liable for all of the Cogan loans on the grounds that he "should have" known of them and should have acted to prevent them.

Our brief argued that the Delaware Business Judgment Rule accords corporate officers a presumption of propriety where they do not breach a duty of loyalty to benefit themselves unless their conduct was grossly negligent. We noted that in finding Smith liable for Cogan's misdeeds, the trial court had effectively reversed the traditional role of the client and lawyer. The duty of a CLO established by the *Pereira* court is to be an all-knowing detective and infallible advisor. That standard is impossible for corporate legal officers to meet, and will not only unreasonably impose liability on CLOs, but may well deter competent persons from accepting in-house legal positions.

In June 2005, the U.S. Court of Appeals for the Second Circuit reversed and remanded, primarily on the grounds that the district court improperly rejected the defendants' demand for a jury trial; the appellate court also disagreed with the district court's calculation of the corporation's financial position at the time of the challenged transactions, calling into question the district court's use of the "vicinity of insolvency" theory to hold that the officers and directors had a fiduciary duty to, and thus liable, to creditors as well as shareholders and to hold certain transactions illegal (including the stock repurchase transaction that resulted in most of the general counsel's liability). The court did not address our arguments regarding the business judgment rule and the scope of an in-house lawyer's duty to "police" the directors.

Atlantic Legal Foundation's participation in this case is in the public interest, because the definition of the proper scope of the responsibilities of in-house corporate counsel is particularly important in today's heightened awareness of the essential role proper corporate governance plays in the financial markets and the economy in general.

Conference on the Erosion of the Attorney-Client Privilege.

Atlantic Legal organized a conference, held in Washington, D.C. in March, 2005, on the erosion of the attorney-client privilege. Federal prosecutors are increasingly requiring corporations and sometimes corporate officers to waive their attorney-client privilege, under the guise of "cooperating" with the government, as a condition of reducing criminal charges or engaging in plea-negotiation. "Cooperation" is one of the factors under federal Sentencing Guidelines for avoiding "enhanced" (*i.e.* increased) penalties. We assembled several panels consisting of distinguished scholars, practitioners and federal law enforcement officials to examine the issues, including Professor Geoffrey C. Hazard, former Solicitor General Theodore Olson, former Deputy Attorney General George Terwilliger.

Atlantic Legal's conference was in the public interest because it served to raise awareness of the fact that a number of federal governmental agencies have adapted policies that threaten the attorney-client privilege and the work product doctrine in the corporate context.

CONSTITUTIONAL LAW

Brody v. Gargano (U.S. Court of Appeals, 2nd Circuit) (First Chair)

These exceptionally important challenges involve the abuse of eminent domain authority, and were pursued in a parallel manner in partnership with the Institute for Justice. Atlantic Legal represented William Minnich and his nephew, Bill Minnich, owners of Minic Custom Woodwork in East Harlem, a business that has been in the Minnich family for more than 70 years. The Empire State Development Corporation, however, planned to condemn their building and transfer it to a private developer for a Home Depot parking garage. The Institute for Justice represents Bill Brody, who purchased and renovated four adjacent buildings in Port Chester, New York, only to find that the village of Port Chester planned to condemn the buildings and then hand them over to a private developer. The developer intended to turn the property into part of a Stop 'n Shop and its parking lot.

Both property owners stood to lose their property through the abuse of the power of eminent domain. Astonishingly, New York State law did not require the government to notify property owners in a timely and direct manner when it plans to condemn property through eminent domain. It required only that notification of a *possible* future condemnation be published in the obscure legal notices section of the newspaper. This notice need not even mention the specific address of the property to be taken. If a property owner did not scour the legal notices section daily, he would likely miss the beginning of the 30-day window he has to challenge the condemnation. Of course, the notice does not mention the 30-day window at all. But by missing this 30-day deadline, the owner lost all rights to protest the condemnation at a later date.

The case involving Atlantic Legal's client, Minic Custom Woodwork, was settled to the advantage of the Minnich family, but the other case remains pending. Atlantic Legal is co-counsel with the Institute for Justice in the *Brody* case. This lawsuit seeks to strike down New York's unfair and deceptive procedures and thus to prevent the condemnation of the Brody property. In the meantime, in mid-September 2004, New York Governor George Pataki signed into law a bill requiring that municipalities and other local governments give actual notice to property owners (to be identified from local tax rolls) about the condemnation process. Condemnors now have to send certified mail notice to owners whose properties may be condemned, and the letters have to inform the owners that this is their one chance to challenge the condemnation. Thus the problem Atlantic Legal and Institute for Justice litigated in the *Minnich v. Gargano* and *Brody v. Village of Port Chester* cases has been rectified by legislation, but, because the legislation is not retroactive, the *Brody* case is still active.

In the ongoing *Brody* litigation, United States Court of Appeals for the Second Circuit on December 7, 2005 in a unanimous decision ruled that the State must give the property owner the maximum notice practicable in order to satisfy the due process requirements of the United States Constitution, and that mere publication in the "Legal Notices" section of the local newspaper, as provided in New York State's Eminent Domain Procedures Law, was inadequate. "Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to apprise them of its pendency." The court also agreed with our argument that the notice must also "conspicuously mention" that it triggers a 30-day review process.

The federal appeals court reversed the district court's ruling in favor of the village and ordered that Brody be given a trial on his claim that he did not get actual notice of the village board

determination. The ruling is encouraging for the property owners, who are challenging the illegal taking of their properties by the government.

Atlantic Legal Foundation's participation in this case is in the public interest because New York's lack of an actual notice requirement created unnecessary impediments to the protection of private property against unwarranted takings, and served no legitimate public purpose.

GEOD v. New Jersey Transit (U.S. District Court, New Jersey) (First Chair)

In this case we are challenging NJ Transit's application of the federal Disadvantaged Business Enterprise guidelines as violative of GEOD's equal protection rights. NJ Transit's "DBE" goals (a) are not based on a sound "disparity study," (b) are "over-inclusive" because they give preferences for all "minority" groups including Asian-Americans and women (when the most recent "disparity study" prepared for NJ Transit shows that Asian American owned firms are over-utilized on contracts awarded by NJ Transit, and that firms owned by Hispanics and women are not under-represented in a statistically significant degree) and thus not "narrowly tailored" and (c) because NJ Transit has not utilized "race neutral measures" to the maximum extent feasible, as required by the federal regulations. The case should be ready for dispositive motions by the summer of 2006.

This case is a follow-on to our earlier success in *GEOD v. State of New Jersey*, in which the State of New Jersey conceded in the consent decree that its Minority and Women Owned Business programs violated the equal protection clause of the Constitution, and which required New Jersey to abandon race and gender goals, and instead to use a race-neutral "small business enterprise" incentive on all state-funded contracts. The result has been that our client has obtained a substantial amount of subcontract work on state highway, port and other infrastructure projects and also has obtained some prime contracts for "stand-by" survey and aerial photography and photogrammetry work. Moreover, the state now trumpets the fact that this complete race-neutral approach has attracted substantial participation in state contracts by minority and woman owned firms.

In addition, under the consent decree the New Jersey Department of Transportation is obliged to utilize to the maximum extent feasible "race neutral" means for achieving minority participation and to pre-submit for review by Atlantic Legal its DBE goals on federally funded projects before they are submitted to US DOT. As a result, NJ DOT's DBE goals are met by a largely race-neutral program. In fact, 15% of NJ DOT's total goal of about 16% is achieved by using a race-neutral "small business enterprise" program. Thus the 2003 consent decree has created a "win-win-win" situation: a fundamental constitutional right to equal protection has been vindicated, our client has once again gotten significant state contracting opportunities, minority and woman owned firms have been able to compete on a level playing field, and the state has benefitted from lower costs because subcontractors and prime contractors now compete on price and quality, not on meeting race- and gender-conscious goals.

Atlantic Legal Foundation's participation in this case is in the public interest because the issue of racial, ethnic and gender preferences in public employment and awarding of public contracts, remains a divisive issue. Preferences affect the efficiency of public services, and can exacerbate societal tensions.

Rapanos v. U. S. and Carabell v. Army Corps of Engineers (U.S. Supreme Court) (*Amicus*)

In December 2005 Atlantic Legal, partnering with New England Legal Foundation, filed an *amicus* brief in support of petitioners in these two consolidated cases, both of which are on appeal from the U.S. Court of Appeals for the Sixth Circuit. Our brief opposes the federal government's attempt to extend its jurisdiction under the Clean Water Act to streams, creeks, ponds and other isolated bodies of water that are only remotely connected to a navigable waterway, because the Army Corps of Engineers has overstepped its jurisdiction under the Commerce Clause and violated principles of federalism.

The *Rapanos* case involves the criminal and civil prosecution of Michigan landowner John Rapanos, for filling a wetlands without a permit, even though the wetlands at issue are neither navigable nor adjacent to a navigable waterway. The government argues that jurisdiction is proper because the wetlands on Rapanos's property are adjacent to a ditch that runs, through a series of other ditches and drains, to a nonnavigable creek which some miles further intersects a navigable water. *United States v. Rapanos*, 376 F.3d 629 (6th Cir. 2004). In *Carabell v. U. S. Army Corps of Engineers*, 391 F.3d 704 (6th Cir. 2004) the "wetlands" are likewise only indirectly "connected" to Lake Huron and Lake Erie.

The Sixth Circuit accepted the "hydrological connection" rule asserted by the Army Corps of Engineers as the basis for its jurisdiction under section 404 of the Clean Water Act, and held that the federal government can regulate wetlands on private property if one molecule of water can get from the wetland to a navigable water – no matter how far away. Rapanos was convicted in the criminal case and sentenced to jail. Not satisfied, the government pressed its civil suit against Rapanos, asking for \$10 million in fines, the forfeiture of 81 acres of property, and \$3 million in "mitigation fees" to maintain that property as wetlands. In the civil suit, the United States charged not only Mr. Rapanos, but also his wife and several of their companies. Rapanos lost in the District Court and at the Court of Appeals, again because the courts accepted the "hydrological connection" theory, and petitioned for certiorari review in the Supreme Court.

The case raises the issue of the limits of federal Commerce Clause jurisdiction under *U.S. v. Lopez*, 514 U.S. 549 (1995) and *U.S. v. Morrison*, 529 U.S. 528 (2000) and, indirectly, the scope of judicial deference to administrative expertise under *Chevron USA, Inc. v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

Our brief argues that the "hydrological connection" theory would negate the Supreme Court's reasoning in *Solid Waste Agency of Cook County v. United States Corps of Army Engineers*, 531 U.S. 539 (2001) ("*SWANCC*"), which held that federal "navigable waters" jurisdiction extends only to waters that currently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce, and would subject 80% of all lands in the United States to federal regulation, despite the reasoning of the Supreme Court in *SWANCC* that it is the "primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources . . ."

The case was argued on February 21, 2006.

Atlantic Legal's participation in *Rapanos* is in the public interest because of the serious federalism and Commerce Clauses issues implicated in this case.

***Rumsfeld v. Forum for Academic and Institutional Rights* (U.S. Sup. Ct. 2006) (*Amicus*)**

In March 2006, the Supreme Court unanimously (Justice Alito not participating) upheld the government's right to withhold funding from those colleges and universities which do not provide military recruiters with the same access to campus facilities and students as they provide to other prospective employers, agreeing with the arguments made by Atlantic Legal in its *amicus* brief filed in support of the government. The case involved a challenge to the constitutionality of the Solomon Amendment, which provides that certain federal funds may not be granted to universities that do not give military recruiters the same access to on-campus recruiting functions as the school provides to other employers.

Atlantic Legal's brief was filed on behalf of 29 high-ranking former senior U.S. military officers and Department of Defense officials, including former Secretaries of Defense James Schlesinger and William Perry and Generals Hugh Shelton and John Shalikashvili (both former Chairmen of the Joint Chiefs of Staff), two retired Commandants of the Marine Corps., and retired Superintendents of the U.S. Military Academy and the U.S. Air Force Academy.

Co-counseling with Greenberg Traurig LLP, we argued that the constitutionality of the Solomon Amendment should be upheld because on-campus recruiting is essential to our national defense, on-campus recruiting is necessary to maintain an all-voluntary military—especially to recruit highly qualified specialists in many fields, including law and medicine—and that Congress, not the Judiciary, has the Constitutional responsibility for raising and supporting the armed forces and has explicitly made the considered judgment that on-campus recruiting is vital to achieving that goal.

Our brief anticipated almost all of the reasoning of Chief Justice Roberts.¹ The Court held that Congress could require equal access by military recruiters directly, relying in part on Congress' power to raise and support the military, an argument Atlantic Legal made: "The Constitution grants Congress the power to 'provide for the common Defense,' '[t]o raise and support Armies,' and '[t]o provide and maintain a Navy.' Congress' power in this area 'is broad and sweeping,' and there is no dispute in this case that it includes the authority to require campus access for military recruiters..." [Citations omitted.]

The Court explained that the Solomon Amendment principally regulates conduct, and that any alleged compelled speech is incidental. The Court also held that the conduct at issue (allowing military recruiters equal access to campus facilities) is not so inherently expressive that it is protected under the First Amendment (distinguishing the Court's flag burning cases). Moreover, students and faculty may associate to express their disapproval of the military's message. The Court distinguished *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557 (1995) and *Boy Scouts of America v. Dale*, 530 U.S. 640 (2000), pointing out that the law schools are not forced to accept "members" they do not want. Here, the Court said, the "association" is little more than

¹ Alas, the Court did not cite our brief. In fact the only *amicus* brief mentioned was one submitted by law professors at Harvard and Columbia, which the Court soundly excoriated.

interaction, and everyone understands the military recruiters are outsiders who come on campus for a limited purpose. Chief Justice John Roberts wrote: "A military recruiter's mere presence on campus does not violate a law school's right to associate, regardless of how repugnant the law school considers the recruiter's message...In this case, FAIR has attempted to stretch a number of First Amendment doctrines well beyond the sort of activities these doctrines protect."

The Court agreed with other arguments we made, writing: "Military recruiting promotes the substantial Government interest in raising and supporting the Armed Forces—an objective that would be achieved less effectively if the military were forced to recruit on less favorable terms than other employers. The issue is not whether other means of raising an army and providing for a navy might be adequate...That is a judgment for Congress, not the courts. It suffices that the means chosen by Congress add to the effectiveness of military recruitment. Accordingly, even if the Solomon Amendment were regarded as regulating expressive conduct, it would not violate the First Amendment..." [Citations and internal quotes omitted].

Atlantic Legal's participation in this case was in the public interest because it enabled the Supreme Court of the United States to understand the views of 29 distinguished Americans who had a profound interest in and knowledge of the issues being addressed.

New York State Court Restructuring Project

New York legal proceedings occur in courts of general and limited jurisdiction (for example, the Court of Claims hears cases against the state, Family Court deals with custody matters, and Criminal Courts handle cases involving criminal conduct). The Chief Judge seeks to consolidate a number of courts and allow for more flexibility when assigning judges to those functions and issues where there is greater demand. Additionally, the Chief Judge wishes to place related issues, which might otherwise be litigated in numerous courts simultaneously, into the hands of one judge (thus mimicking the federal system, where a judge typically oversees all aspects of a case from beginning to end). The objective is to make the courts more efficient and allow for speedier resolutions.

Atlantic Legal completed a report reviewing the proposals to reform the New York State Court System. Our report, which was prepared over a two-year period, drafted and revised in the second half of 2004, was adopted by Atlantic Legal's Board of Directors made public in March of 2005. It provides strong support for the proposal of the Chief Judge of the State of New York.

Our report noted that the Chief Judge already has authority to partially reorganize the courts through her administrative powers, and the Chief Judge has exercised that authority to consolidate in one court the adjudication of cases involving child custody, child support and domestic violence in one court.

Atlantic Legal's report was warmly praised by the Committee for Modern Courts, a respected organization seeking court reform. The report was described as a valuable bulwark in the process to improve New York's court system.

This project is in the public interest because it affects public access to, and perception of, the judicial system. Atlantic Legal Foundation will bring an objective voice to the public debate about a vital

issue that affects the public directly (if they are litigants or other users of judicial services), and indirectly (as taxpayers).

Internship Program

In the summer, autumn and winter of 2005, Atlantic Legal expanded its tradition of hosting academic interns from many of America's major universities and colleges as well as foreign lawyers and law students. Five summer interns, carefully selected from among numerous outstanding applicants, helped Atlantic Legal to accomplish its mission in an economical and mutually beneficial manner. In the fall, we hosted an academic intern who is an Australian law graduate, who was about to commence a clerkship for the Supreme Court of one of the States of Australia, and in the winter we hosted a capable undergraduate from Dartmouth College. Two undergraduates, one from Barnard College and the other from Baruch, have assisted Atlantic Legal on a part-time basis through most of the year.

In addition to doing extensive research on current cases, Atlantic Legal's interns engaged in reading and discussion seminars concerning economic liberty, sound science, school choice, and individual rights. Atlantic Legal believes that educating students about limited, responsible and effective government, free enterprise, individual liberty, and sound science is fundamental to the survival of a free society.

Atlantic Legal's internship program serves the public interest because it gives law students, pre-law students and recent graduates exposure to public interest law and to public law and policy issues that they do not ordinarily get working for private law firms or other private employers.

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